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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

In re the Marriage of LISA J. LEEBOVE and STEPHEN G. STEINBERG.	
LISA J. LEEBOVE, Respondent, v. STEPHEN G. STEINBERG, Appellant.	A145258 (City & County of San Francisco Super. Ct. No. FDI11774500)

Stephen G. Steinberg (Husband) appeals orders of the San Francisco Superior Court finding Arizona, the state of residence of respondent Lisa J. Leebove (Wife), to be a more convenient forum for child custody proceedings, and resolving certain matters regarding visitation. Husband challenges only the court's decision that the custody proceedings should take place in Arizona.[1] We shall affirm the orders from which Husband appeals.

[1] Wife argues that Husband's Appellant's Appendix does not include all the documents necessary for us to review the family court's order and that his opening brief fails to set forth fairly all the evidence, including the evidence favorable to Wife. It is, of course, the appellant's burden to show error with an adequate record, and issues raised without a proper record may be deemed waived. (*Pringle v. La Chapelle* (1999) 73 Cal.App.4th 1000, 1003; *Cypress Security, LLC v. City and County of San Francisco* (2010) 184 Cal.App.4th 1003, 1014.) Moreover, an appellant challenging a finding of fact must set forth all material evidence on the point. (*Foreman & Clark Corp. v. Fallon*

I. BACKGROUND

In 2011, Wife filed a petition in the San Francisco Superior Court to dissolve her marriage to Husband. The couple had twin sons, who were two years old at the time. The family court entered a status-only judgment of dissolution in January 2013.

In July 2013, the parties entered into a memorandum of understanding (MOU), which, in pertinent part, provided that Wife would move to Arizona with the children; that after she moved, she would bring the children to San Francisco one weekend monthly for visits with Husband and that Husband would visit the children monthly in Arizona; that they would "submit the issue of the conditions of Steinberg's visitation with the Parties' children to the San Francisco Superior Court should they be unable to continue to reach agreement on their own"; and that "[i]t is the intent of the parties that the San Francisco Superior Court reserve jurisdiction over all issues, including child support, add-ons, modification(s) of physical and legal custody, visitation, and the enforcement of the terms of this Memorandum." Wife moved to Arizona with the children at the end of August 2013.

Mother filed a petition in Maricopa County, Arizona, for "Establishment of Legal Decisionmaking and Parenting Time" in May 2014. Because the San Francisco Superior Court action had not been stayed or terminated, the Arizona court did not take jurisdiction over the matter; it indicated that if Wife found San Francisco an inconvenient forum, she should move the California court to decline to exercise jurisdiction on that basis.

Wife moved in the San Francisco family court for an order setting an evidentiary hearing on whether San Francisco was an inconvenient forum pursuant to Family Code,[2] section 3427, a portion of the Uniform Child Custody Jurisdiction and Enforcement Act. (§ 3400 et seq.) She sought to have the court relinquish jurisdiction over child custody

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(1971) 3 Cal.3d 875, 881.) Despite any deficiencies in the briefs or record Husband filed, we shall consider his contentions on the merits.

[2] All statutory references are to the Family Code.

determinations to the Superior Court of Maricopa County, Arizona (the Arizona court). An evidentiary hearing was set for February 3, 2015.

Wife's testimony

At the February 3, 2015 evidentiary hearing, Wife testified that she and the children had lived in Arizona since late August 2013. Their home was about 800 miles from San Francisco. In order to attend the hearing that day, Wife had had to arrange for her mother to come to the house at 6:30 a.m. to take the children to school so that Wife could catch her 7:45 a.m. flight. Wife's mother or father would pick the children up from school, take them to baseball, prepare their dinner, and get them ready for bed. A friend of Mother's would then come to the house and wait until Wife got home after her flight landed at 11:25 p.m. It would be very difficult for Wife to get to San Francisco in time for a morning hearing. Her mother had recently been diagnosed with lupus and Wife testified she could not plan on her mother always being able to care for the boys, and she could not plan to leave them with her mother overnight.

The cost of a round-trip ticket from Arizona to San Francisco could range from $400 to $800 dollars. Wife was an attorney, but had recently changed her status with the California bar to "inactive." She was getting a teaching certificate so she could have a work schedule that was similar to the children's school schedule. It was her experience that attorneys in Arizona charged less than attorneys in San Francisco.

The boys had just turned six years old and were in kindergarten in Arizona. They had some extracurricular activities, such as science class, baseball, and Sunday school, in addition to their activities with friends. Their doctors were in Arizona.

Wife acknowledged that she had signed the MOU providing that jurisdiction would be in the San Francisco Superior Court. She testified, though, that she had believed that issues regarding custody would "bubble up to the surface right away and that they would get resolved right away and that they would get resolved here in San Francisco within the first couple of months after the MOU." At the time she signed the MOU, she did not intend to have jurisdiction remain in San Francisco "in perpetuity" and she thought that the case would be moved to Arizona at some point. She had brought her

petition in the Arizona court in May 2014 because no custody orders had been entered in the San Francisco family court since the parties entered into the MOU in July 2013, and she believed Arizona was the proper place to bring a petition.

Wife testified that she believed it would be less of a burden for Husband to travel to Arizona for custody hearings than for her to travel to San Francisco. Husband had no other children, he telecommuted for his work, and his income for the last year of which she was aware was more than $800,000. Wife's annual income had been $120,000 or $130,000. She had moved to Arizona because she could not afford a home for herself and the children in San Francisco.

Husband's visitation with the children was scheduled to proceed in "stages," with different levels of supervision, apparently due to his history of drug use.

Husband's Testimony

Husband testified that he would not have signed the MOU if he had known Wife would seek to transfer the case to the Arizona court. He anticipated that if the parties litigated child custody and visitation, his doctors, therapists, and medical providers would be called to testify. They were located in San Francisco, and it would be expensive for them to fly to Arizona to testify. The family had no history of domestic violence.

Husband testified that he often traveled for his job, he would be able to attend morning hearings in the Arizona court, and he had earned about $800,000 the previous year. He had briefly had an attorney in Arizona in the past.

Family Court's Rulings

The family court granted Wife's request for an order finding San Francisco an inconvenient forum under section 3427. The court stated it would retain jurisdiction until June 1, 2015, at which point the action would be stayed provided that (1) Husband had had three "Stage 3" visits, and (2) Wife filed an action in the Arizona court, through which custody and visitation would be addressed. In a May 8, 2015 "Findings and Orders After Hearing," the court set forth these terms, set a schedule for visitation and provided for monitoring of exchanges and supervision of Stage 1 visits, required Father to submit drug tests before visits, provided for payment of costs of travel, and required

Wife to pay the cost of video recording any expert depositions of witnesses who were located in the Bay Area and either to stipulate to the introduction of the video recordings in evidence at trial in Arizona or to pay for the cost of the experts' travel.

II. DISCUSSION

Husband contends the family court did not consider or properly weigh the factors necessary to find the San Francisco court an inconvenient forum.[3] Section 3427, subdivision (a), authorizes a California court with exclusive, continuing jurisdiction to decline to exercise its authority to make a child custody decision if it determines it is an inconvenient forum and the court of another state is a more appropriate forum. (*In re Cristian I*. (2014) 224 Cal.App.4th 1088, 1098; and see § 3422.) Before making this decision, the court must consider "all relevant factors," including the following: "(1) Whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child. [¶] (2) The length of time the child has resided outside this state. [¶] (3) The distance between the court in this state and the court in the state that would assume jurisdiction. [¶] (4) The degree of financial hardship to the parties in litigating in one forum over the other. [¶] (5) Any agreement of the parties as to which state should assume jurisdiction. [¶] (6) The nature and location of the evidence required to resolve the pending litigation, including testimony of the child. [¶] (7) The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence. [¶] (8) The familiarity of the court of each state with the facts and issues in the pending litigation." (§ 3427, subd. (b).)

The lower court has "broad discretion with respect to weighing the applicable factors and determining the appropriate weight to accord to each." (*Brewer v. Carter* (2013) 218 Cal.App.4th 1312, 1320.) Its decision will not be disturbed on appeal unless there was a clear abuse of discretion. (*In re Marriage of Nurie* (2009) 176 Cal.App.4th

[3] We reject Wife's contention that Husband acquiesced in the family court's ruling. The record shows that he maintained his request that the matter remain in San Francisco.

478, 513.) We review its factual findings for substantial evidence. (*Brewer*, 218 Cal.App.4th at p. 1320.)

Father contends the family court failed to consider and weigh the enumerated factors. To the contrary, the family court explicitly considered each of the section 3427 factors. We quote the court's findings: "1. The parties did not introduce any evidence of domestic violence. [¶] 2. The children have resided in Arizona for more than one year. [¶] 3. The distance between the Phoenix metropolitan area and the San Francisco metropolitan area is moderate (approximately 750 miles). [¶] 4. The financial hardship imposed upon [Wife] in travelling to San Francisco is only slightly greater than the financial hardship imposed upon [Husband] in traveling to Phoenix. [¶] 5. The memorandum of understanding which was incorporated in the Judgment in this case states: 'It is the intent of the parties that the San Francisco Superior Court reserve jurisdiction over all issues, including child support, add-ons, modification(s) of physical and legal custody, visitation, and the enforcement of the terms of this Memorandum.' [¶] 6. At this time, a substantial portion of the evidence relates to [Husband's] condition and treatment by providers in San Francisco, as well as the observation of [Husband's] visits by professional supervisors in both San Francisco and Phoenix. As time goes on, more of the evidence is likely to relate to the health, activities and education of the children who live predominantly in Arizona. [¶] 7. The courts in both states are able to decide the issues expeditiously. The longer the case remains in San Francisco, the more this court will have invested in developing the factual record. [¶] 8. At this time, the court in San Francisco is more familiar with the facts and issues. In a few weeks, however, a new judge will be assigned to this department."

Husband quibbles with some of these findings by arguing that the trial court improperly considered future events in concluding that future evidence might relate more to the boys' activities and education in Arizona, that the San Francisco court would invest increasing resources in developing the factual record as time went on, and that a new judge would soon be assigned to the case. He provides no authority for his contention that it is improper to consider likely future events or the familiarity with the case of the

assigned judge, and we are not persuaded that the court considered improper factors or that the evidence does not support its findings.

Nor are we persuaded that the court abused its discretion in concluding Arizona was a more convenient forum for determining child custody and visitation. Several of the factors weighed in favor of Arizona as a forum: Arizona was the children's home, evidence related to their health, education, and activities was more readily available in Arizona, and Wife faced a slightly greater financial hardship than Husband in traveling. While there were also factors weighing in favor of San Francisco as a forum, such as the MOU and the fact that Husband's providers were located in San Francisco, the family court could reasonably conclude that on balance, matters related to child custody would be more conveniently decided in Arizona.

Husband also argues that Wife acted fraudulently and in bad faith in signing the MOU without intending to honor her agreement to have the San Francisco court exercise jurisdiction over child custody and visitation, and that she acted in bad faith in filing her action in Arizona. The family court explicitly considered the MOU in its findings, and we see no basis to conclude the court failed to weigh it properly or that Wife's actions undermine the ruling finding Arizona a more convenient forum.

III. DISPOSITION

The orders appealed from are affirmed.

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Rivera, J.

We concur:

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Ruvolo, P.J.

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Reardon, J.